IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA.

Civil Revision 82 of 2006.

Date of Decision: 13th September, 2007.

Negi Ram and others **…….Petitioners.**

versus

Bhajan Dass **…….. Respondent**

Coram

The Hon'ble Mr. Justice Dev Darshan Sud,Judge.

Whether approved for reporting?[1]

For the Petitioner: Mr. Pyush Verma, Advocate.

For the Respondents: Ex parte.

Dev Darshan Sud, Judge.

This Revision petition has been filed by the petitioners who were defendants before the learned Trial Court against the order of the learned Civil Judge (Jr. Division), Court No. II, Rohru, District Shimla, in CMA No. 76/6 of 2006, dismissing the application of the defendants praying for permission to examine Shri Surat Singh Ex-petition writer as a witness on their behalf.

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[1] Whether Reporters of Local Papers may be allowed to see the judgment?

Without entering into the controversy of the merits of the main case urged before the learned Trial Court, facts necessary for determination of this revision petition are that the petitioners filed an application for summoning Shri Surat Singh as a witness. It was alleged that when the counsel for the applicants-defendants was preparing the brief for arguments, it transpired that the statement of Tehsildar/ Sub Registrar Chirgaon and Kesar Singh Thakur, Pradhan Gram Panchayat Chirgaon who were the marginal witnesses to the will, could not be recorded as both of them had died and that in these circumstances, the statement of the scribe of the will Shri Surat Singh was required. Instructions on this behalf could not be imparted to the counsel as the applicants are rustic village folk and not conversant with the intricacies of the law. The averment made in the application are:-

> "1. That the above noted case is pending before this Ld. Court and is fixed for hearing for 29.4.2006. That when the counsel for defendants was preparing brief for arguments it has been revealed that statement of the then Tehsildar, Sub Registrar Chirgaon, and one marginal witness Kesar Singh Thakur the then President Gram Panchayat Chirgaon, could not be recorded. The then Sub Registrar Chirgaon Mr. Negi who attested the Registered Will and Shri Kesar Sisngh Thakur the then President after inquiry it has been revealed that both of them are now dead. And as such statement could not be recorded".

The applicants claim that it was in the interest of justice that the witness be allowed to be examined in order to prove

the veracity of the documents set up in the defence. The application, of course was resisted merely on the ground that the petitioners-defendant wanted to fill in the lacunas in his evidence.

Learned Trial Court while dealing with the matter held that the case has been fixed for final arguments and in case application is allowed it would tantamount to reopening the case, the application was, therefore, dismissed.

Notice of this revision was issued to the respondents who have been proceeded *ex parte* on 12.7.2007 as nobody appeared on their behalf.

I have heard learned counsel for the petitioners and have gone through the record of the case. Learned counsel submits that even though order 18 Rule 17-A may have been deleted, yet this court was not powerless in allowing the application for additional evidence. He has relied upon a decision of this Court in **H.P. State Industrial Development Corporation vs. M/s Divyang Associates, Latest HLJ 2006 (HP) 148** in support of his contention that this Court can exercise its inherent jurisdiction in order to set right any injustice and allow additional evidence.

Legal proposition apart, I find that the learned Trial Court was in error in shutting out the evidence. A hyper technical approach should be avoided and the approach of the court should be justice oriented. (**See: Kulwant Kaur and others vs. Gurdial Singh Mann and others (2001) 4 SCC 262).** Even if the case was at its final stage and it was felt by the court that the trial may be

delayed for sometime, surely the opposite party should have been compensated with costs for any inconvenience which may have been caused. Merely allowing an application for recording evidence does not amount to accepting the veracity of the truth or establishing of the fact urged by a particular party. There was no harm in case the application was allowed and the witness allowed to be examined in accordance with law. The Trial Court has adopted a hyper technical view of the entire matter. This revision is accordingly allowed. The judgment and order of the Trial Court is quashed and set aside. Permission is granted to the defendant to examine Shri Surat Singh as a witness on their behalf. This, of course is subject to the condition that the defendants will pay cost of Rs. 3000/- to the plaintiff on the next date of hearing.

This revision is accordingly allowed. There shall be no order as to costs. Parties to appear before the Trial Court on **31st October, 2007.** Records of the case be sent back to the Trial Court forthwith which will proceed in the matter as directed in accordance with law.

13th September,2007. **(Dev Darshan Sud),**
(cm) **Judge.**